



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,207	11/03/1999	THORBJORN ANDERSSON	027650-836	6484

7590 05/08/2002

ROBERT S. SWECKER
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
PO BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
----------	--------------

1772

DATE MAILED: 05/08/2002

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/423,207

Applicant(s)

ANDERSSON ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 1772

DETAILED ACTION
WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112 rejection of Claim 1, of record on page 2 of the previous Action, is withdrawn.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'consisting of density polyethylene' is indefinite, as it is unclear what density is being claimed. For purposes of examination, the polyethylene will be assumed to be low density polyethylene, as in Applicant's marked up copy. Correction and / or clarification is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1772

5. Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohn et al. (U.S. Patent No. 5,819,991) in view of Nakagawa et al (U.S. Patent No. 4,907,957).

With regard to Claims 1, 3 and 4, Kohn et al. disclose an extruded / blow molded bottle for metered dispensing of a liquid product comprising an intermediate layer of foamed plastic and outer, solid layers of plastic (column 1, lines 50 – 67; column 2, lines 1 – 12); the foamed and non – foamed layers are the same, and the foamed material is 10 – 30% less dense than the same material in the non – foamed state; the three layers are high density polyethylene (column 1, lines 55 – 67, column 2, lines 1 – 5); the two outer, surrounding layers have substantially the same layer thickness (column 1, lines 50 – 67; column 2, lines 1 – 12), and the outer skin thickness (and therefore weight) takes up 20% of the total thickness (and therefore weight; column 2, lines 51 – 58). Kohn et al. fail to disclose an intermediate layer comprising a blend of high and low density polyethylene, and an intermediate layer comprising a rigid high density polyethylene and ductile low density polyethylene.

Nakagawa et al. teaches the use of low density polyethylene as the foamed intermediate layer of a three a bottle having high density polyethylene as the non – foamed outer layers, for the purpose of imparting flexibility on the resulting bottle (column 5, lines 27 – 51; column 10, lines 8 – 34). Nakagawa also teaches that high density polyethylene is well – known in the art to be relatively rigid, and low density polyethylene to be relatively ductile (soft; column 5, lines 52 – 68; column 6, lines 1 – 5).

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a combination of 50% rigid high density

Art Unit: 1772

polyethylene and 50% ductile low density polyethylene as the intermediate layer in Kohn et al. in order to impart flexibility on the resulting bottle as taught by Nakagawa et al.

ANSWERS TO APPLICANT'S ARGUMENTS

6. Applicant's amended claims, and Applicant's arguments, regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 4 as being unpatentable over Kohn et al. in view of Nakagawa et al. have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 7, that the combination of Kohn et al. and Nakagawa et al. is improper because the intermediate foamed layers of both Kohn et al. and Nakagawa et al. consist of only one polymer component. However, neither Kohn et al. nor Nakagawa et al. teaches that the intermediate layer disclosed only consists of one polymer layer; Kohn et al., in fact, teach that the foamed layer of their invention is a polyolefin, such as polypropylene, polyethylene, or their copolymerides (column 1, lines 66 – 67; column 2, lines 1 – 5); an intermediate foamed layer which contains all three components therefore reads on Kohn et al.

Applicant also argues, on page 7, that the combination of Kohn et al. and Nakagawa et al. is improper because the prior art does not suggest the desirability of combining the intermediate layer of Kohn et al. with the intermediate layer of Nakagawa et al. to arrive at the two – component intermediate layer of the claimed invention. However, if the desirability of the intermediate layer of Kohn et al. is suggested by Kohn et al., and the desirability of the intermediate layer of Nakagawa et al. is suggested by Nakagawa et al., the desirability of an

Art Unit: 1772

intermediate layer which combines the properties (and therefore the components) of both intermediate layers is clearly suggested by the prior art.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson

Art Unit 1772

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

5/6/02